



**LEGAL LIABILITIES IN
EMERGENCY MEDICAL SERVICES**

THOMAS D. SCHNEID

LEGAL LIABILITIES IN EMERGENCY SERVICES

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Preface

The aim and goal of this text are to open the eyes of many emergency medical professionals and organizations as to the myriad of legal issues that they face, often unknowingly, on a daily basis. Knowledge of the various legal issues and challenges can assist the emergency medical professional and organization in addressing the legal issue in a proactive manner and thus avoid or minimize the potential risk of costly legal entanglements and litigation.

Historically, emergency medical organizations, not unlike fire departments and police departments, were the groups providing emergency services in time of need and few ever envisioned suing the emergency medical organizations for the services they provided or failed to provide. However, in today's litigious society, virtually every call, every employee, and every decision possesses a potential risk of costly litigation. Prudent emergency medical professionals and organizations should become knowledgeable as to the potential legal risks and address these issues before the risk becomes a reality.

Lastly, I would hope that the emergency medical professionals reading this text realize that the law is a moving target. Every day in this country, court decisions are being made, legislatures are making new laws, and the interpretations of the law are being provided by agencies that possess the ability to impact your emergency medical organization. Emergency medical professionals are urged to continue your education and maintain your competency in the legal issues involving your profession just as you do with the technical components of your job.

Thomas D. Schneid
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July 2000

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Foreword

Emergency Medical Personnel—consider the following scenario. You are traveling down the interstate one weekend evening going to visit a relative in another state. You're a little tired because you have just finished a long shift. All of a sudden you come across a serious accident scene. You appear to be the first person on the scene. There are bodies and blood everywhere. You stop and take assessment of the most seriously injured. You begin to do what you know best. Stop the bleeding. One person has a arterial wound that is pumping blood, others are screaming. You wish you had an emergency kit and a radio. Another person stops to help. You ask them to hold a compress on the bleeder and show them the proper method. You then start to care for several other seriously injured victims. One has a blocked airway. You look back. Your helper is going through the pockets of the injured. You lose control. What is this world coming to? You scream and chase off this person. Back to work. You must save as many lives as you can. You're racing around but there are too many that are seriously injured. No emergency kit. You do the best you can.

Soon others passersby stop. Can they help? Its dark and you don't want another thief. Too many questions are being asked. One tries to do CPR but doesn't know what he's doing. He is twisting the victim's head in an awkward position. Don't any of these people have training? "Get back, I'll do it myself." Another couple of so-called helpers try to move a victim from next to a car. "Don't move that man, he may have a neck injury," you say. They want to argue with you. They state that the car may blow up. They saw it in a movie. You check on the bleeder, the thief released your compress; the victim is bleeding bad now and has lost a lot of blood. Where is the state patrol?

Finally, real help arrives. Many have died. You did the best you could. You saved some lives this night. Many people praise you. However, some passersby are upset with you. They wanted to help but you kept them back. They caused more harm than help. One trooper gets your name and address and thanks you. You finally head down the road.

A month later, you get a knock at the door. You are being served with a Complaint-At-Law. You are now named in a wrongful death lawsuit. It involves one of the victims who didn't make it. The next day, another Complaint arrives, then a third. What do you do?

Soon, the local newspaper calls. You find out that some of the passersby complained that you didn't let them help and that fact likely contributed to the deaths of these individuals. Your mind is spinning . Don't they know how

hard you worked? How many lives you did save? One car had six children in it and several of them had serious wounds that you attended. Two people had blocked airways and you cleared them and saved their lives.

You go to work and your boss informs you that you are being placed on administrative leave with pay. He is sorry but there is a lot of heat on this one. You weren't on duty. You ask about the Good Samaritan Law. He responds that he can't talk to you. He suggests you hire an attorney. The city attorney has told them to put you on leave and not answer questions. You go home.

When you get home you begin to question your actions that night. What did I do wrong? Why can't I tell my story? Do I need a lawyer? What is this going to cost me? Will I lose my job?

This book by Thomas Schneid will help answer these questions. It does an excellent job of outlining the basics of the law and legal liabilities that emergency medical personnel face every day. Knowledge is power. It will also provide you with peace of mind to the extent that you will know what your rights are and what acts and/or actions you can and should take, whether on duty or off duty. Will it prevent the lawsuits in the above scenario? Not necessarily, because almost anyone can bring suit against you. But what it will do is give you information that will help you understand how the legal process works and what actions and situations lend themselves to placing you at risk for being charged with a negligent act. It will also explain how the Good Samaritan Act works and how and when you might lose protection under it. I recommend this book highly to anyone in the profession of emergency medical care.

—Michael S. Schumann, M.S., J.D.
Associate Professor—Loss Prevention and Safety
Eastern Kentucky University

EMERGENCY MEDICAL SERVICES; the law. They just do not seem to fit in the same sentence, or *do they*.

EMS has oftentimes been called the "third" public service. It is the newest profession in the response field. We only knew of its development when we saw the emergence of the Federal Department of Transportation (DOT) training curriculum in the late 1960s for training Emergency Medical Technicians and paramedics. The first television shows in the 1970s portrayed the skills embodied by this new field of life-saving responders.

The glow does seem to diminish a bit when we think of emergency operations being touched by litigation. In today's fast-paced society, lawsuits abound. No longer are we protected by the thought that EMS is "untouchable" by suits and actions. The public has come to expect and deserve a degree of professionalism from all of us.

The veil of insulation no longer exists in our growing society. We must take an important message from Tom's text, and that is: *We are responsible for our actions, and we are held accountable for what we do every day.*

Litigation is everywhere, and as my old criminal law professors once said, “It doesn’t matter whether you are right or wrong I will defend you ‘til you run out of money, and then . . .” These are words to heed—we are in the public spotlight, each and every day, and our customers—and the public we serve—deserve and expect the very best from today’s maturing EMS services. Taking the time to do the *Job* right and documentation of what was done or not done are both very important.

Tom has filled this text with some very important information on all phases of EMS operations, government standards, and regulations, and also contributed some very practical common sense that will benefit you, as the provider, and the public we choose to serve.

You have taken a very important step toward making this a reality for serving the public by reading and understanding the basic tenets of our service. *To do no harm*, and to be as professional about your training, education, and activities as possible. If in doubt, ask and learn the right practices and procedures. Do your best to benefit our ultimate customer—the *public that requires our professional services*.

There are many volumes written on case law that has evolved to deal with when things go wrong, but this text is the first step in trying to learn how to prevent loss. You may not realize how many laws, regulations, and agencies affect you in the performance of EMS activities. OSHA, DOT, and EPA, as well as civil and criminal statutes apply. This potpourri of rules and regulatory issues await you daily.

Your best defense is to make sure that your training and education are state of the art. Document your training activities from your first Emergency Service Training (EMT) course through your required in-service education seminars. Keep copies of *everything* that you do to enhance your skills. Remember, if it was not documented, it was *not* done. Document, Document, Document.

Education is the key to survival in the future. Your success depends on the lessons learned from this textbook. Safety is the responsibility of everyone involved. Education is also the responsibility of everyone in the EMS and responder fields.

Remember, any job worth doing is worth doing right the first time. Learn, train, and prepare yourself for a very rewarding career in the field of Emergency Medical Services.

Our name says it all. Service, to the people that need our assistance. Remember, we are here to deliver the best care and customer service we can; after all isn’t that the care you would like to receive?

—Michael J. Fagel, Ph.D.
North Aurora, Illinois

Michael Fagel has been in safety, fire, and EMS work for over three decades, serving in various agencies throughout his career.

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Thanks to Shiella for her tireless work in researching, assembling, and correcting all of my mistakes.

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Introduction and Overview

History is the study of other people's mistakes.

—Philip Guedalla

Excellence is an art won by training and habituation. We are what we repeatedly do. Excellence, then, is not an act but a habit.

—Aristotle

The legal issues involving the emergency medical services have greatly expanded to encompass a broad spectrum of potential liabilities in the past decade. In concept, the emergency medical service was developed to first and foremost assist injured individuals. However, in today's litigious society, potential legal liabilities that can have a devastating effect on the emergency medical organization and EMS personnel have become part and parcel of our everyday decision-making process.

One of the major considerations when dealing with legal issues in the emergency medical service is the fact that the law is constantly moving. The law is absolutely not a stagnate creature that can always provide absolute “black and white” answers to every situation. To this end, it is important that emergency medical service personnel, charged with the responsibility of managing potential risks and thus potential liabilities, be aware of not only the laws themselves but also the court interpretations and changes in the laws by the various legislative and executive bodies at the federal, state, and local levels.

Laws directly and indirectly affecting the emergency medical service usually are initiated at the federal or state levels. Remembering back to our grammar school civics classes, the federal level is a checks-and-balance system consisting of the legislative branch (i.e., Congress), the executive branch (i.e., the president), and the judicial branch (i.e., the Supreme Court). Most states possess a similar structure. Laws are usually initiated by either the executive branch or legislative branch and are interpreted after becoming law by the judicial branch (i.e., case law).

In this text, a number of the major laws that have a direct or indirect effect on the emergency medical service are identified and discussed. It should be noted that all of the potential legal liabilities for any given emergency medical service organization have not been addressed, given the voluminous nature of this endeavor. Emergency service personnel with

responsibilities in this area are encouraged to identify the potential risks in their organization and the various laws that directly or indirectly affect their specific operations. In addition to the laws themselves, it is vitally important that emergency service personnel be able to locate and understand the court interpretations of the laws, also known as case law, in order to be able to ascertain the applicability of the law to the situation and circumstances at hand.

Case law is the accumulation of court decisions, which, in essence, shapes and develops new law and clarifies old law. In each chapter throughout this text, you will find cases that will exemplify the particular point of law addressed in the chapter, while other cases in the appendix address related issues. It is important that you read, evaluate, and brief each of these cases in order to acquire a complete understanding of the law in the particular area. As the basic rule of thumb, when analyzing and/or briefing a case you should read through the case in detail at least three times. On the first reading, identify the type of case and the court, and acquire a basic understanding of the case type. In the second reading, you should identify the basic issues, facts, and holding of the decision as well as any dissenting opinion. In the third reading of the case, you should take notes regarding the actual brief of the case, which you will be referring to at some later point. It is essential that you take good notes and brief your case extremely well so that you can refer to the brief and refresh your memory later in your studies.

FINDING THE CASE

Finding the case in the library is often one of the most difficult tasks of your total analysis. As illustrated by the various cases provided in this text, other cases are referenced and numerous "cites" are provided throughout this text. All reported decisions of cases in the United States judicial system are listed according to the publication in which the case appears (called a reporter), the volume in which the case is located, and the initial page number. An example of a cite is 36 S.E. 2d 924. If you were searching for this case, you would go to the South Eastern Reporter, second edition, look for volume number 36, and find the case at page 924. In the federal judicial system, the publications tend to be organized by region; in most state judicial systems the cites are located in a state reporter. It should be noted that not all cases are reported and published. Generally, trial court decisions are not published because these decisions do not serve as mandatory precedent for other courts to follow. Usually only decisions of federal and state appellate courts are published.

Statutes, regulations, and standards can be located in other publications such as the Code of Federal Regulations. This system is set up utilizing the same citation system of publication, volume, and page number as are the reporters of judicial court decisions. However, the series numbers may reflect the particular regulation or standard. For example, 29 C.F.R. 1910.120 is the

Occupational Safety and Health Administration's Standard regarding hazardous waste operation and emergency response. If you were searching for this particular standard, you would go to the Code of Federal Regulations, which is signified by the C.F.R. designation, volume 29 and section 1910.120.

In addition to the normal procedure for locating a case, some law offices and law libraries provide an electronic database for locating cases. The two major databases are Westlaw and Lexis. Each of these databases normally provides training and publications to assist you in locating the particular case. As a general rule, these databases provide a basic menu of the various areas where the law is located and numerous subdatabases that guide your search. For example, if you were searching for a federal decision, you may enter the federal database and then narrow your search to the particular area of law that you are seeking. If you should possess the case name, the case name can normally be utilized to pull up the case. If you are searching for a particular issue of the law, these databases will provide the case cites for your review and evaluation. It is highly recommended that you acquire the particular training or assistance from the librarian at the law library prior to conducting any search on Westlaw or Lexis.

It is highly recommended that you become familiar with the particular library that you will be using during this course. Please take a few minutes out of your busy schedule and walk through the library to locate the different publications that are available and note the location of each of these publications. Please thumb through a few of the publications and test your skill at locating particular cases so that you can locate cases in a timely manner in the future.

BRIEFING THE CASE

The basic purpose for briefing a case is to help you understand the particular legal issues of the case and their significance. There are various methods of briefing a case and the following format is meant to illustrate only one of the methods. Your instructor may suggest an additional format for you or you may devise your own system to help you analyze these cases. No matter what method you should adopt, be sure that you read the case thoroughly prior to beginning to take notes for your brief.

The basic framework in which we would recommend you brief a case includes the following:

1. Issues
2. Facts
3. Holding (Decision)
4. Dissent
5. Your Opinion
6. Underlying Policy Reason

ISSUES

Identify the basic issue or issues that are in question before the court. In order to find the basic issue or issues involved, you have to identify the rule of law that governs the dispute and ask how it applies to the particular facts of the case. In most circumstances, you will be writing the issue for your case brief in the form of a question that combines the rule of law with the material facts of the case. For example, does the arson statute in the state of Kentucky apply to a minor child?

FACTS

The facts of the particular case describe the events between the conflicting parties that led to this particular litigation and tell how the case came before the court that is now deciding it. Often included in the facts are the relevance to the issue the court must decide and the basic reasons for its decision. When you first read through the case, you will not know which facts are relevant until you know what the issue or issues are in the particular case. Thus, it is vitally important that you read the case thoroughly prior to beginning to summarize the facts of the particular case.

In addition to the specific facts of the situation, it is important to note what court decisions have preceded the case that you are currently reviewing. Often, the decisions that are published are appellate decisions and thus a district court or circuit court has decided the matter previously and now the matter is on appeal. If the particular facts of the situation in an appellate case are not provided in detail, you may want to research and review the district or circuit court decisions in order to learn the particular facts in your case.

In this section, you should also include the relevant background for the case. You should identify who the plaintiff and the defendant are, the basis of the plaintiff's suit, and the relief the plaintiff is seeking. You may also want to include the procedural history of the case; for example, other motions that are relevant to the case such as Motions to Dismiss. In an appeals case, the decisions of the lower courts, grounds for those decisions, and the parties who appealed should also be noted.

Within this facts section, you should be as brief as possible. However, all pertinent points should be noted. Although this is a judgment call, most statement of facts in a brief should not be more than two or three paragraphs in length. Given the fact that you will have read the case at least three times while briefing it, the facts provided in your brief should be the major points used to refresh your memory.

HOLDING

The holding is the courts' decision on the question that was actually brought before it by the parties. The court, in a split decision, may provide the minority's decision or dissent also. The holding can normally be identified as the statement of the court's decision or the majority decision. A holding,

in essence, provides the answer to the question you were asking in your issue statement. If there is more than one issue involved in any given case, there may be more than one holding.

DISSENT

Often in U.S. Supreme Court cases and appellate cases, the majority decision is the decision of the court. However, the minority position is also provided an opportunity to give its reasoning as to its dissent in the decision-making process. Although the dissenting opinion is not law and has no bearing on the case, the dissent provides another point of view on the particular issue of the case and may also be referred to in some later case.

OPINION

After you have reviewed the case thoroughly and have analyzed the court decision and briefed your case, you should have a good idea whether you agree or disagree with the court's opinion. In this section, you should provide your personal opinion as to whether you agree or disagree with the decision and the reasons for your agreement or disagreement.

POLICY

In many cases, there is an underlying social policy or a particular social goal that the court wishes to further. When a court explicitly refers to those policies in a particular case, this information should be included in your brief since it will provide you with a better understanding of the court's decision. For example, in the historic case of *Brown v. Board of Education*, the decision of the court was formed through an underlying social policy to eliminate discrimination in our school system. This underlying social policy is often very important in appellate and Supreme Court decisions. Attached is a sample brief for your review and evaluation. It is highly recommended that you "test" your skills by briefing several of the cases within this text or other cases prior to your initial briefing of a case for a class. In addition to the information stated above, several other helpful hints that may assist you in briefing the case are listed below.

1. It is best to try to confine your brief to a maximum of one page. If your brief is over two pages long, you have probably provided too much information. Remember, the purpose of a brief is to refresh your memory when you need to recall this information for class or other purposes.

2. The cases that are printed in this textbook have been edited by the author for the purposes of this book. In many cases, the full court opinion may run twenty or more pages. If you find that you are having difficulty understanding the case in the edited format, you may want to go to the library and read the full text opinion.

3. During your first few attempts at briefing a case, it is often difficult to extract its important elements and issues. Please keep in mind that not all

judges are expert writers so the opinions may often be confusing or difficult to understand. Additionally, you should realize that all courts do not follow the same format in writing opinions, so you may find some decisions more difficult to understand than others. Also, you may find that judges sometimes go off on a tangent and discuss other rules and points of law that are not essential to the determination of the particular case. It is your job to be able to filter through the information provided to identify the particular issues and laws that are applicable to the case.

4. You may often run across latin or “legal” terms with which you are not familiar. Since you will need to have a clear understanding of the terminology utilized in the particular case, it is advisable to look up the term in a legal dictionary. A good idea is to have a *Black’s Law Dictionary*, *Ballantine Law Dictionary*, *Gilmer’s Law Dictionary*, or other law dictionary available while you are reading and briefing the case. Standard dictionaries often do not provide these terms or the explanation provided may be incomplete.

5. When reading the cases provided in this text, you may want to look at the particular chapter and section headings of the textbook in which the case appears. If you are having difficulty identifying the particular issue of the case, you will normally find that the issue is related to the topic discussed in the chapter or section heading. The cases in this text have been inserted to illustrate the subject matter being discussed in each of the chapters.

6. Remember, the issue or issues in the particular case should always be stated in the form of a question. You should never begin your issue with the words, “whether or not” because this will not frame the question properly. Also, the terminology, “should plaintiff win” or “is there a contract” are not correct forms to use in stating the particular issue.

7. In determining the particular rule of law, ask yourself, “If I had to tell someone who knew nothing about this case what this case is about or what it stands for in one sentence, what would I say?” Often, the rule of law can be determined by taking the issue and putting it in the form of a declaration. For example, in the case of *Miranda v. Arizona*, 384 U.S. 436 (1966), the issue and rule may be as follows:

Issue: When a person is taken into police custody, or otherwise deprived of his freedom of action in a significant way, must his constitutional rights to remain silent and to have an attorney present be explained to him prior to questioning?

Rule: When a person is taken into police custody, the following warnings must be given prior to questioning:

1. That he has the right to remain silent.
2. That any statement he makes may be used against him as evidence.
3. That he has the right to have an attorney present.
4. If he cannot afford an attorney, one will be appointed for him.

8. Finally, do not use other people’s briefs. To acquire the knowledge you need, you must read a particular case and analyze the court decision

yourself—use of another individual's brief of a case is essentially worthless. A brief is simply the codification of your thoughts and work, which you will refer to in the future in order to refresh your memory.

Example Case Brief

Case Name: *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978)

Issue: Is Section 8(a) of the Occupational Safety and Health Act unconstitutional in that it violates the Fourth Amendment?

Facts: Appellee (Barlow's, Inc.) initially brought this action to obtain injunctive relief against a warrantless inspection of its business premises by Appellant (Secretary of Labor Marshall). The inspection was permitted under Section 8(a) of the Occupational Safety and Health Act of 1970 which authorizes agents of the Secretary of Labor to search the work area of any employment facility within OSHA's jurisdiction for safety hazards and OSHA violations without obtaining a search warrant or other process. A three judge Idaho District Court ruled in favor of Barlow's and concluded that the Fourth Amendment required a warrant for this type of search and that the statutory authorization for warrantless inspections was unconstitutional. This appeal resulted.

Holding: Yes, Section 8(a) of the Occupational Safety and Health Act of 1970 was unconstitutional in that it violated the Fourth Amendment. The U.S. Supreme Court affirmed the decision of the Idaho District Court and granted Barlow's an injunction enjoining the enforcement of the act to that extent.

The court states that the rule against warrantless searches applies to commercial premises as well as private homes. Although an exception to this rule is applied to certain "carefully defined classes of cases" including closely regulated businesses such as the firearm and liquor industries, this exception does not automatically apply to all businesses engaged in interstate commerce, as the Secretary alleges.

Opinion: I agree with the court in this case. I feel that requiring search warrants ensures that the search is a reasonable one and that the particular business being inspected is not merely being singled out (for one reason or another). I agree with the court in that requiring search warrants will not make inspections less effective nor will it prevent necessary inspections, but rather it will serve to ensure fairness in inspections.

Policy: Although no specific public policy was mentioned in the case, the implied policy was that of probusiness, antiregulation.

ORGANIZATION OF THE JUDICIARY SYSTEM

The aim of law is the maximum gratification of the nervous system of man.
—Justice Learned Hand

The American judicial system is composed of numerous levels of courts encompassed within two broad categories, namely the federal judicial system and the individual state or territory's judicial system. Jurisdiction and the specific rules governing a particular court dictate which court possesses the authority to render an enforceable decision over the particular matter in dispute.

Jurisdiction by the courts over any given matter can be determined in two basic manners: (1) jurisdiction over the person; or (2) jurisdiction over the object. In essence, for a court to be able to hear and make an enforceable decision over a particular matter, the case must involve a resident of the state or the situation, e.g., the automobile accident, must have occurred within the state. Some courts, such as tax courts and traffic courts, have special jurisdiction over specific particular matters.

A particular court's jurisdiction over a matter can also be limited by the type of case, the dollar amount involved, and other factors. In most states, specific jurisdictional requirements are established by the courts or legislature. These jurisdictional requirements can usually be found in the state's court rules or in the state statutes.

In the federal court system, the offense must be within the jurisdiction of the federal courts or diversity must exist in order for the federal court to be able to hear the case. For example, if an individual committed arson involving a federal building, the matter is a federal offense and the case would be heard in the federal court system. Conversely, if a West Virginia resident committed arson to a building owned by a West Virginia resident and the building was located in West Virginia, the West Virginia state court system would possess jurisdiction. However, if the building was located in another state, or the parties were not residents of West Virginia, diversity may exist permitting the federal court system to acquire jurisdiction. It should be noted that federal courts can adjudge cases involving questions of state law and state courts can consider cases involving federal law.

Jurisdiction is also classified as original or appellate. The court that originally hears the case is considered to possess original jurisdiction. If the decision of the original court is appealed to a higher court, the higher court must possess appellate jurisdiction in order to hear the appeal. In courts possessing original jurisdiction, usually known as trial courts, district courts, or circuit courts, the *Perry Mason* or *L.A. Law* type of hearings are held. In the court of original jurisdiction, evidence is presented, witnesses are called, arguments are made, and the court determines the matter of a factual basis. In courts possessing appellate jurisdiction, the determination is usually made with limited, if any, oral arguments, and is based on the record provided by the court of original jurisdiction. The appellate court reviews the judgment of the court of original jurisdiction to ensure all appropriate rules

and procedures were followed and that there was appropriate factual evidence to support the decision of the jury or judge in the case. If the rules were followed and the facts substantiated the decision, most appellate courts are required to sustain the decision of the court with original jurisdiction.

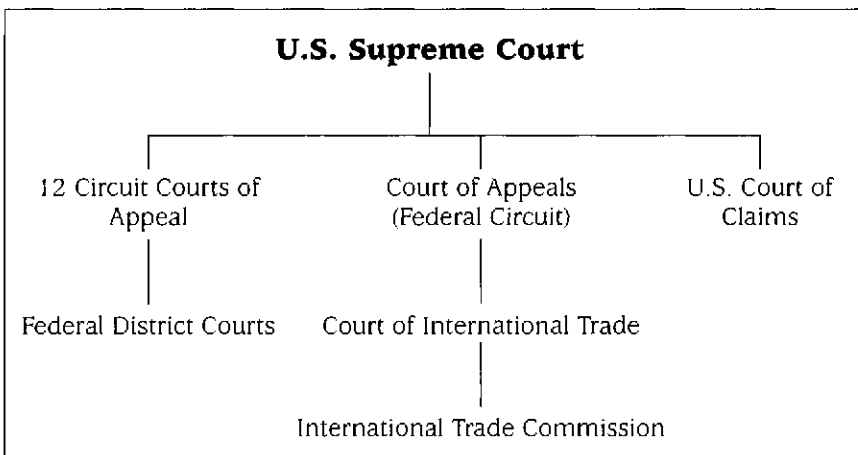
In determining which court is appropriate for hearing a particular case at the original jurisdictional level, the first determination is who are the parties involved and where was the "situs" or location of the incident or offense in dispute. The second determination is which court system, federal or state, possesses original jurisdiction over the matter. The third level of determination is which court possesses jurisdiction over the matter, based on the amount of money involved or other specific requirements. The determination of the appropriate court is vital in ensuring that the issue in dispute is properly adjudicated.

FEDERAL JUDICIARY SYSTEM

Article III, Section 1 of the U.S. Constitution provides:

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.

The federal judicial system is composed of the U.S. Supreme Court, twelve circuit courts of appeal, district courts, and various special courts such as territorial courts and the U.S. Tax Court. Additionally, there is a specialized circuit court system known as the U.S. Court of Appeals for the Federal Circuit, which possesses exclusive jurisdiction to hear all appeals from the U.S. Court of Claims, the Court of International Trade, and the International Trade Commission.



SUPREME COURT OF THE UNITED STATES

The United States Constitution designates the Supreme Court to be the highest court in the United States. The Supreme Court has original jurisdiction over multiple cases where one state is suing another, where courts of appeal have differences of opinions with regard to a federal issue, or in hearing appeals from the Circuit Courts of Appeal. The Constitution limits the jurisdiction of the Supreme Court to considering cases that involve international law, federal law, and federally protected rights. If none of the issues involves federal law or international law, the U.S. Supreme Court lacks authority to consider the case and must defer to the judgment of the state supreme courts. The Constitution does not expressly grant the Supreme Court the authority to declare a law that Congress or a state legislature has passed to be invalid. In the famous case of *Marbury v. Madison*, it was found that since the Constitution is the supreme law in the United States, a court may hold invalid any attempt to circumvent its provisions. John Marshall stated in *Marbury v. Madison* that the U.S. Supreme Court did not possess this authority and that it would nullify the values of the written Constitution and permit it to be altered by any statute that the current Congress or state legislature would happen to pass.

The U.S. Supreme Court is the highest appellate court in the United States. Some cases are required to be heard by the U.S. Supreme Court by writ. However, the vast majority of cases are brought up on certiorari. Writs of certiorari to the U.S. Supreme Court are basically requests for discretionary review of a lower court's ruling. The ruling of the U.S. Supreme Court is the final rule with most decisions in the United States; a U.S. Supreme Court decision can be modified or overturned only by an act of Congress (e.g., The Civil Rights Act of 1990).

CIRCUIT COURTS OF APPEAL

This judicial system is divided into 12 federal judicial circuits within the United States. Courts of Appeal consider all appeals from the District Courts within their jurisdiction or district unless the case is one in which the appeal could go directly to the U.S. Supreme Court. Each circuit encompasses between three and nine states and the U.S. Court of Appeals hears all appellate decisions from district courts within that region. The U.S. Courts of Appeal establish a legal precedent from which all United States District Courts within that particular circuit must follow. Law on a particular subject may vary among and between the circuits with resolution of any conflict coming only through appeal to and decision by the U.S. Supreme Court.

FEDERAL DISTRICT COURTS

District courts are the trial level courts of the federal judicial system. They are the courts in which witnesses will be heard, testimony will be taken, and an initial decision made. As noted in the diagram above, the Federal District

Court is the initial or entry level in most federal cases, and all levels of courts above the Federal District Court are considered appellate. District courts hear both criminal and civil actions.

SPECIAL COURTS

Federal District Courts normally have their own rules and procedures to be followed in five special courts. Within the federal judiciary system, special courts have been developed to address particular issues. At the circuit court level, there is a U.S. Court of Appeals for the Federal Circuit, which is based in Washington, D.C. and provides exclusive jurisdiction for appellate decisions from the U.S. Court of Claims, Court of International Trade, and International Trade Commission. In the area of tax, a special United States Tax Court has been developed for any appeals from decisions made by the Commissioner for the Internal Revenue Commission. The United States Tax Court does not handle claims for overpayment of taxes. These matters are normally handled by the U.S. Court of Claims or U.S. Federal District Court.

STATE COURT SYSTEMS

State Court systems are usually structured on the same basic arrangement as the federal court system. However, it should be noted that the names utilized for each of these courts may vary from state to state (for example, the New York Supreme Court is the trial level court). State Court systems are typically composed of a state appellate court, district courts of appeal or circuit courts of appeal, courts that may be called superior or supreme courts, and smaller specialized courts such as municipal courts, traffic courts, or justice courts.

The state supreme court is normally the highest appellate court within the state. Specifically, the state supreme court is made up of a chief justice and anywhere from four to eight associate justices. The state supreme court normally hears all appeal cases from the lower state courts or cases involving interpretation of state law from a federal court. Cases involving the death penalty, habeas corpus, or other criminal-related matters are heard by the state supreme court.

States have several courts of appeals, each responsible for a designated area within the particular state. These courts normally hear all of the appeal cases within that state. The court of appeals normally considers appeals from the trial court judgments and orders unless the state supreme court assumes jurisdiction over the matter. The entry level into most state court systems is the trial court or district court level. Courts can be called various names such as superior court, supreme court, or district court. District courts are the initial determining body in most civil and criminal matters. State district courts have jurisdiction to consider other cases involving such things as individual taxes, probate, domestic relations, and juvenile problems. District

courts or trial courts are also the courts possessing jurisdiction over most criminal matters involving felonies and particular misdemeanors within the state.

MUNICIPAL COURTS AND OTHER COURTS

States with larger populations have established municipal courts, traffic courts, and other minor courts to handle particular matters. In some jurisdictions, municipal courts or small claims courts handle civil cases that do not involve a large amount of money. In other jurisdictions, municipal courts have been established to hear cases involving misdemeanors except those involving juveniles. In these states, special courts have been established to hear juvenile offenses.

In some states, courts have been established with special limited jurisdiction to hear particular matters. Such courts include city courts, city justice courts, and township courts. These courts are normally established to assist another court when there is a particular specialized problem, such as building and fire code violations, and specialized training is needed for the presiding judge or court official.

In summation, the court systems in the United States are designed to act as referees between two or more adversarial parties in a dispute. Specialized roles and procedures have been established for both criminal and civil proceedings. The U.S. Constitution and other laws within our judicial court system guarantee citizens a means of redressing any injustice or wrong that has been done to them. Individuals must assert their rights in a civil action in order to be able to achieve justice.

Personnel Issues in Emergency Services

You can employ men and hire hands to work *for* you, but you must win their hearts to have them work *with* you.

—Tiorio

Nine-tenths of the serious controversies which arise in life result from misunderstandings; results from one man not knowing the facts which to the other man seem important, or otherwise failing to appreciate his point of view.

—Louis D. Brandeis

One of the major areas of litigation for emergency service organizations involves human resource or personnel issues. Human resource issues in an emergency service organization can run the spectrum from uniform issues through harassment on the job. The management of the personnel function in an emergency service organization appears simple in concept but is, however, an extremely broad area encompassing a wide variety of activities and legal requirements. When an emergency service organization effectively and appropriately manages its human assets, there usually are no complaints and the emergency service organization functions smoothly. However, if even one minor mistake is made in this area, the situation can turn into an instant crisis.

CONFLICT SITUATIONS

Given the close quarters, intense situations, and number of highly qualified and skilled emergency service personnel involved in any organization, conflicts are inevitable. Substantial time and effort may be required within any emergency service organization to simply resolve conflicts. Whether the “problem” is a misunderstanding regarding the payment of workers’ compensation benefits to an employee or a supervisor who wants to issue discipline to an employee, one or more members of the management of an emergency service organization usually is involved as the mediator, referee, or final judge.

Conflicts between employees can often escalate if not addressed or addressed improperly. Additionally, even the best efforts of the human resource

manager or other designated emergency service management members can ultimately result in an escalation of the conflict. As emergency service personnel, you should attempt to resolve the conflict in the best way possible while safeguarding the conflicting parties, your company or organization, and yourself.

Below are several general rules for your consideration in resolving a conflict situation:

- Never permit the conflict to escalate to physical confrontation.
- Remove the conflicting parties from the general work population. Use your office, conference room, or other appropriate facility.
- Permit the conflicting parties to tell their side of the story uninterrupted by the other party.
- Provide both sides with the opportunity to tell their side of the story.
- Lower the level of aggression—keep the parties calm.
- If tensions and voice volume rise, ask the parties to lower their voice.
- If the party's voice rises, soften your voice. Don't get pulled into the conflict—it's not personal.
- Permit time for the parties to "cool off."
- Never make a "snap judgment." Permit yourself time to investigate the situation fully prior to making a decision.
- If physical violence is possible, take appropriate precautions.
- Physically separate the parties across a table or room.
- Don't permit the parties to leave the meeting together.
- Always follow company policies and procedures.
- Bring the issues to a final resolution.
- Take appropriate safeguards following resolution of issues.
- Document everything!

In many circumstances, if a conflict within the emergency service organization can be resolved internally, there is no need to pursue costly legal action. However, if the emergency service organization permits the situation to escalate, many of these conflicts can result in legal action by one or more of the parties resulting in an expenditure of time, monies, and effort to resolve the situation in a court of law.

POLICIES AND PROCEDURES

The life blood of most human resource programs within emergency service organizations is the written policies and procedures that provide guidance

and direction in the decision-making process of the emergency service organization and provide perimeters of acceptable and unacceptable behavior for EMS personnel. In many emergency service organizations, extensive written policies and procedures governing virtually every aspect of the personnel and human resource functions have been formulated and reduced to written form.

In developing a written personnel and human resource policy, emergency service organizations should consider the following:

- What is the purpose of the policy?
- Who is going to be directly and indirectly affected by the policy?
- Do you possess upper management approval for the policy?
- Is the policy clearly written and understandable at all educational levels?
- Does the policy possess legal implications? Legal requirements?
- What, if any, will be the reaction to the policy?
- Has the policy been reviewed by appropriate individuals?
- Is there an enforcement provision in the policy?
- Has an appropriate period of time been allotted prior to enforcement?
- Will the policy be published through posting, handbook, or other methods?
- Will the policy be reviewed and revised on a periodic basis?

Emergency service organizations should be aware that policies and procedures are often subject to challenge by employees through internal or external tribunals. Policies and procedures should be written utilizing clear, unambiguous language at an educational level appropriate to the work force. Additionally, policies and procedures should be written in a defensive manner in anticipation of challenge and should be carefully reviewed by all levels of the management team and legal advisors prior to implementation.

Sample Policy

Bereavement Leave

Bereavement Leave will be granted to a full- or part-time employee who experiences a death in their family. If it is a loss of an immediate family member (spouse, child), the employee will be granted up to three (3) days of time off with pay. For parent, sibling, grandparents, only one (1) day off with pay will be granted. If additional time off is requested, it will be unpaid and the employee must receive written permission from the EMS Operations Manager.

Personnel and human resource policies and procedures should be evaluated and revised, as necessary, on a planned periodic basis. Personnel

and human resource policies, not unlike other areas like safety and health, often require modification to the policies to adhere to changes in the laws, or court decisions, or even changes in the work force status. In many emergency medical service organizations, a planned "audit" of all policies and procedures is conducted on an annual basis and appropriate revisions are identified and initiated to ensure compliance with the current requirements.

Some emergency medical service organizations utilize personnel handbooks as a single source for all personnel and human resources, as well as other important areas, policies, and procedures. Emergency medical service organizations should exercise extreme caution when developing handbooks to ensure the handbook cannot be construed as a formal contract between the company or organization and the employee.

Emergency medical service organizations should also be aware that specific language utilized in handbooks and policies possess specific legal meanings. Some of the terms to be aware of include the following:

- Just Cause
- Good Cause
- Good Faith
- Guaranteed
- Secured
- Permanent
- Job Tenured
- Due Process
- Annual Review
- Permanent Job
- Guaranteed Employment

RECORD MAINTENANCE

One of the main responsibilities of the human resource area of any emergency service organization is the maintenance of important records and documents for future reference and use. Many documents must be maintained by law, while other documents are maintained for legal purposes or company requirements. The basic rule of thumb is to maintain employee documents for the life of the employee plus 20 years because most legal actions in which the document may be important usually will occur, if at all, during this period. However, some specialized documents, such as some environmental records, may need to be maintained beyond this period of time.

MEDICAL AND INSURANCE RECORDS

Two categories of records that often possess an extremely “long tail” are employee medical records and insurance records. The primary reason for the maintenance of these documents for an extended period of time beyond the employee’s departure from the workplace is the potential exposures during their employment at your operation. In many circumstances, medical and insurance records are maintained for the period of the statute of limitations following an employee’s death due primarily to the legal actions that can be brought following an individual’s death under the wrongful death statutes of many states. As with any important document, medical and insurance records must be accurate and maintained in an appropriate environment so that they can be referred to many years in the future. Additionally, medical and insurance records can be viewed by the individual employee under many laws and such records are often the basis for future litigation.

PERSONAL ATTENDANCE RECORD MAINTENANCE

The Personnel Attendance Records are among the most important documents maintained by emergency medical service organizations. These records identify the days in which an individual has missed worked, the reason for missing work, the number of times an individual is late for work, and other pertinent information. This is often the base level document through which disciplinary action is taken against an employee under the prescribed disciplinary procedures. Personnel attendance records are normally maintained in a secure location with minimal access by employees. Employee attendance records are normally maintained for a specified period of time beyond their employment period with the company or organization in case of disputes involving the initiated disciplinary action or other applicable reasons.

RECORD ACCESS

Emergency medical service organizations should be aware that the OSHA standards permit employees access to their medical records and, in some circumstances, other laws permit employees access to other records within the facility. Emergency medical service organizations should prescribe a procedure through which employees would have access to the applicable records and establish procedures for the photocopying of records, access to other employees records, and so on.

In virtually every emergency medical service organization, personnel will leave the organization. The human resource department or other identified function within the emergency medical service organization is usually responsible for the documentation of any type of disciplinary action and/or termination records. These records are normally confidential in nature, however they may be subject to a Court Order or Arbitration Order. Employee

records as to attendance, disciplinary action, and other personnel and human resource issues should be maintained separately from any medical-related records.

Who has access to your records? Who inputs the employees' attendance record data? Do supervisors have access to individual employee medical records? The issue of confidentiality and access to sensitive records is an important issue for emergency medical service organizations. Specific policies and procedures should be established to identify the procedures through which confidentiality is maintained, identifying who has access to each type of record, and additional issues in order to maintain confidentiality of appropriate records.

TAX REPORTS

An emergency medical service organization, like any company or organization, is normally responsible for the completion of appropriate federal, state, and often local tax reports that need to be generated on behalf of the company as well as for certain employees. Additionally, when employees are hired, specific tax forms (such as a Form W-4) must be completed and appropriately filed. In the area of current employees, records as to Federal Insurance Contribution Act (FICA) taxes, income tax withholding, social security, and unemployment tax as well as other taxes are often required. Additionally, many employers utilize the targeted job tax credits (TJTC) and other programs that require extensive tax records.

As with other tax withholdings identified above, the emergency medical service organization as well as the employee (i.e., payroll deduction), the equivalent shares of social security tax are often required to be forwarded to the appropriate government agency by the employer. There are many specific rules regarding the payroll deduction of such taxes and regarding the acquisition of social security benefits with which the emergency medical service organization should know. Emergency medical service organizations should also note that an employer identification number is required for the reporting of employment taxes or for providing employees with tax statements. There are specific forms utilized by the Internal Revenue Service as well as the Social Security Administration Office for these requests.

GOVERNMENT AGENCY REPORTS

Emergency medical service organizations should be aware that there are numerous reports that should be made available and/or are required to be forwarded to the Occupational Safety and Health Administration or Environmental Protection Agency regarding specific situations or incidents. Additionally, in some circumstances, the governmental agency will forward a request for additional information, which is required to be sent to the agency in a requisite period of time.

Although discussed in detail in later chapters, emergency medical service organizations should pay special attention to the potential legal liabilities involved in the hiring process, as discussed below.

AMERICANS WITH DISABILITY ACT (ADA) CONSIDERATIONS

The human resource manager or other member of the emergency medical service organization management team is often the individual “making the call” when hiring or promoting individuals, or in job changes, and so on. Individuals within the organization with this specific responsibility should possess a firm grasp of the ADA and be able to provide consideration and education in this area to other team members in order to ensure appropriate decision making.

REFERENCE INFORMATION AND EMPLOYING TESTING

Emergency medical service organizations should exercise extreme caution when providing information to other employers regarding references or past employment history. There has been a substantial amount of litigation regarding the provision of improper information about a terminated employee. Emergency medical service organizations may wish to establish procedures and policies about the type and nature of information provided to a request for references.

Effective communications between the emergency medical service organization management team and EMS personnel can minimize potential conflicts and thus costly legal actions. Effective communication includes not only oral communication but written communication. Communication with personnel is essential and must be clear and concise so that employees do not “assume” any facet of it. Some key points in the area of communications with personnel to keep in mind include:

Oral Communications—

- Clear and concise
- Never assume anything
- Use paraphrasing and other techniques
- Watch body language

Written Communications—

- Clear and concise
- Appropriate sentence structure

- No misspellings
- Appropriate format

One of the areas of potential risk and thus legal liability for many emergency service organizations is in employee testing programs. There are a wide variety of testing programs including, but not limited to, testing for controlled substances, truth testing, and recently, more sophisticated testing such as DNA testing. Emergency service organizations should be extremely cautious in the area of employee testing, given the recent laws regarding employee testing and privacy right issues.

Approximately 50 percent of the employers in the United States now perform some type of alcohol and controlled substances testing and most emergency service organizations are performing some level of testing. The testing for alcohol and controlled substances procedures normally involves some type of invasive procedures such as acquisition of blood, urine, and most recently hair. Due to the privacy rights issues arising because of the invasive nature of this type of testing, emergency service organizations should exercise extreme caution in the development of these programs as well as ensuring compliance as to the chain of custody, acquisition of samples, testing procedures, and so on.

Emergency medical service organizations should be aware that there is substantial risk of litigation regarding controlled substance and alcohol testing programs. Given the invasive nature of such testing as well as the possible repercussions from a positive test, it is imperative that emergency medical service organizations ensure that their testing procedures are absolutely in compliance and be prepared for challenges on every aspect of their testing program.

Potential Federal Laws That May Impact Testing Programs

1. Americans with Disabilities Act (42 U.S.C. § 12101)
 - Applied to EMS organizations with 15 or more employees
 - Prohibits discrimination in all employment areas (Title I) against qualified individuals with disabilities
 - Requires reasonable accommodation
 - Acquire information from the Equal Employment Opportunity Commission (EEOC).
2. Civil Rights Act of 1866 (42 U.S.C. § 1981)
 - Applies to public and private sector
 - Applies to "all persons" under recent U.S. Supreme Court decisions